

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

JUSTIN E. HUBBERT,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

Case No. C05-5149FDB

ORDER DENYING 2255 PETITION

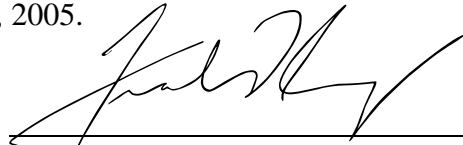
Petitioner pleaded guilty to a felony Information charging Receipt of Visual Depictions of Minors Engaged in Sexually Explicit Conduct, was sentenced to a 27-month term of imprisonment (low end of the Guidelines range), followed by a three-year period of supervised release. Petitioner did not appeal the sentence, and the conviction was final no later than February 10, 2004. Petitioner seeks re-sentencing in light of *Blakely v. Washington*, 124 S. Ct. 2531 (2004) and *United States v. Booker*, 125 S. Ct. 738 (2005).

The Court, having considered Petitioner's Motion, the Government's response, and being fully advised, agrees that for the following reasons, fully elaborated in the Government's Response to the 2255 Petition, the Petition must be denied: (1) the Petition is time-barred (the Petition was filed on February 28, 2005 more than one year after his conviction was final; (2) *Booker* does not apply

1 retroactively to criminal cases on collateral review; (3) Petitioner failed to raise the *Blakely* issue
2 before the District Court or on appeal, and, thus, has defaulted on this claim; moreover, *Booker* does
3 not provide a basis for showing cause and prejudice for this default.

4 NOW, THEREFORE, IT IS ORDERED: Petitioner's 2255 Petition is DENIED and this
5 cause of action is DISMISSED.

6 DATED this 25th day of May, 2005.

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8 FRANKLIN D. BURGESS
9 UNITED STATES DISTRICT JUDGE
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